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Attorneys for Plaintiffs, District Council 16 Northern  
California Health and Welfare Trust Fund, et al.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA HEALTH AND WELFARE  
TRUST FUND, and its JOINT BOARD OF  
TRUSTEES; ROBERT WILLIAMS AND JOHN  
MAGGIORE, Trustees;

DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA JOURNEYMAN AND  
APPRENTICE TRAINING TRUST FUND, and its  
JOINT BOARD OF TRUSTEES; ROBERT  
WILLIAMS and JEANNIE SIMPELO, Trustees;

RESILIENT FLOOR COVERING PENSION  
FUND, and its BOARD OF TRUSTEES; TOM  
CUDDIE, Trustee;

CENTRAL COAST COUNTIES FLOOR  
COVERING INDUSTRY PENSION FUND, and  
its BOARD OF TRUSTEES; TOM CUDDIE,  
Trustee; and

Plaintiffs,

v.

ADVANTAGE COMMERCIAL SERVICES,  
INC., a California corporation, doing business as  
ACS FLOORS,

Defendant.

Case No.

**COMPLAINT**

Parties

1. The District Council 16 Northern California Health and Welfare Trust Fund (“Health Fund”); the District Council 16 Northern California Journeyman and Apprentice Training Trust Fund (“Apprentice Fund”); the Resilient Floor Covering Pension Fund and the Central Coast Counties Floor Covering Industry Pension Fund (collectively “Pension Funds”) are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 (“ERISA”) § 3(3), 29 U.S.C. § 1002(3). Robert Williams and John Maggiore are Trustees and fiduciaries of the Health Fund. Robert Williams and Jeannie Simpelo are Trustees and fiduciaries of the Apprentice Fund. Tom Cuddie is a Trustee and fiduciary of the Pension Funds. The Health Fund, Apprentice Fund, Pension Funds, and their respective Trustees and fiduciaries, are collectively referred to herein as “ERISA Plaintiffs” or “Plaintiffs”.

2. ADVANTAGE COMMERCIAL SERVICES, INC., a California Corporation, doing business as ACS Floors, (“ACS” and/or “Defendant”) is an employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

Jurisdiction

3. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

4. Jurisdiction exists in this Court over all the claims by virtue of the Labor Management Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

5. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they arise out of a common nucleus of operative facts that form the basis of the federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

Venue

6. Venue is conferred upon this Court by § 502, 29 U.S.C. § 1132. Where an action is

brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs' discretion, in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at their principal place of business in Dublin, California. Thus, jurisdiction and venue are properly grounded with this Court.

7. Venue exists in this Court with respect to the claims under LMRA § 301, 29 U.S.C. § 185, as this Court has jurisdiction over the parties, as District Council 16 of the International Union of Painters and Allied Trades (the "Union") maintains its principal place of business in this district, its duly authorized officers or agents are engaged in representing employee members in this district, and the claims arise in this district.

#### Intradistrict Assignment

8. The basis for assignment of this action to this Court's Oakland Division is that all of the events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA Plaintiffs' Funds and the Bargained Entities are administered, and where Defendant therefore failed to fulfill its statutory and contractual obligations to Plaintiffs.

#### Bargaining Agreement

9. Jake Christophe, on behalf of ACS, entered into the Northern California Floor Covering Master Agreement ("Bargaining Agreement") between the Union and the Floor Covering Association Central Coast Counties. The Bargaining Agreement requires Defendant to provide employer contributions to Plaintiffs' ERISA Funds, to the Union for union dues, and to the other plans more fully described in the Bargaining Agreement. Plaintiffs are third party beneficiaries of the Bargaining Agreement.

10. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to collect monies due by Defendant to the following bargaining entities: the IUPAT Finishing Trades Institute, the IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Industry Fund, the Skills, Safety, Supervisor & Survival Training Awards Recognition (STAR) Program, Inc., the Vacation/Holiday Fund, and the IUPAT Political Action Together-Political Committee (collectively referred to herein as the "Bargained Entities"). Plaintiffs' Boards of Trustees

1 have been authorized to collect and distribute monies due to the Bargained Entities as well as dues  
2 due to the Union under the Bargaining and Trust Agreements.

3 11. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs (the  
4 “Trust Agreements”), which are incorporated into the Bargaining Agreement and made binding on  
5 Defendant, Defendant is required to regularly pay to ERISA Plaintiffs, the Bargained Entities, and the  
6 Union, certain sums of money, the amounts of which are determined by the hours worked by  
7 Defendant’s employees. Contributions are due on the fifteenth (15th) day of the month following the  
8 month hours were worked, and considered delinquent if not received by the last day of that month.  
9 Defendant is also required, pursuant to the Bargaining and Trust Agreements, to pay liquidated damages  
10 in the amount of ten percent (10%) for each delinquent contribution, but in the amount of twenty percent  
11 (20%) for each delinquent contribution which is the subject of litigation. Moreover, the Bargaining and  
12 Trust Agreements provide that interest accrues on delinquent contributions at the rates reasonably set  
13 by the Trustees from the day contributions become delinquent, which is the first (1st) day of the month  
14 following the month in which payment was due, until paid.

15 12. The Bargaining Agreement further requires Defendant to maintain time records or time  
16 cards, and to submit any and all relevant records to Plaintiffs for examination to determine whether  
17 Defendant is making full and prompt payment of all sums required to be paid by it to Plaintiffs. Should  
18 an audit of Defendant’s records reveal Defendant has failed to provide full and prompt payment of all  
19 sums due, Defendant must reimburse Plaintiffs for the amounts due, including audit fees, in addition to  
20 any other obligations pursuant to the Bargaining and Trust Agreements.

21 Factual Allegations

22 13. Defendant has failed and refused to comply with an audit of its payroll records for the  
23 period from December 1, 2018 through the present.

24 14. Plaintiffs are also entitled to recover any and all contributions, and all liquidated damages  
25 and interest on delinquent contributions, found due on timecards, audit, or otherwise including  
26 estimated contributions for months Defendant failed to report to Plaintiffs, through the time of  
27 Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there are any  
28 additional amounts due from Defendant.

**FIRST CAUSE OF ACTION**  
**For Audit Compliance, Payment of Delinquent Contributions, Interest, Liquidated Damages,**  
**Attorneys' Fees and Costs Against Defendant**

15. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 1, above.

16. Defendant has a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Entities, and to timely pay dues to the Union, pursuant to the Bargaining Agreement and Trust Agreements. Defendant also has a contractual duty under the Bargaining Agreement, and Trust Agreements incorporated therein, to permit an audit of its records to determine whether it is making full and prompt payment of all sums required to be paid by it to Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

17. In addition, Defendant has a statutory duty to timely make the required payments to Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

18. By failing to make the required payments to Plaintiffs, Defendant breached the Bargaining Agreement and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a). In addition, by refusing to permit an audit of its records, Defendant has breached the Bargaining Agreement.

19. Defendant's failure and refusal to permit the audit was at all times, and still is, willful. Defendant continues to breach the Bargaining Agreement, and incorporated Trust Agreements, by failing to permit the audit and to pay all amounts owed as alleged. Said refusal is unjustified and done with knowledge and intent.

20. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained from continuing to refuse to perform as required thereunder.

21. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

22. This Complaint does not in any manner relate to statutory withdrawal liability that may

1 or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any  
 2 such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents,  
 3 Trust Agreements, and the law.

4 Prayer

5 WHEREFORE, Plaintiffs pray as follows:

6 1. For an order,

7 (a) requiring that Defendant comply with its obligations to Plaintiffs under the terms  
 8 of the Bargaining Agreements and Trust Agreements, including permitting an audit of its records as  
 9 requested by Plaintiffs;

10 (b) enjoining Defendant from violating the terms of those documents and of ERISA;  
 11 and

12 (c) enjoining Defendant from disposing of any assets until said terms have been  
 13 complied with, and from continuation or operating of Defendant's business until said terms have been  
 14 complied with.

15 2. For a judgment against Defendant as follows:

16 (a) Any unpaid contributions, due at time of Judgment, including those determined as  
 17 due by audit, timecards, or otherwise, including estimated contributions for any months Defendant fails  
 18 to report to Plaintiffs pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

19 i. To ERISA Plaintiffs and the Bargained Entities, in accordance with  
 20 ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

21 ii. To the Union in accordance with the Bargaining Agreements.

22 (b) Liquidated damages on any late-paid and unpaid contributions in an amount  
 23 provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA  
 24 § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

25 (c) Interest on any late-paid and unpaid contributions at the rates set in accordance  
 26 with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132  
 27 (g)(2)(B).

28 3. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in

1 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance  
2 with the Bargaining Agreements for all Bargained Entities; and with LMRA § 301, 29 U.S.C. § 185,  
3 for all Plaintiffs.

4 4. That the Court retain jurisdiction of this case pending compliance with its orders.

5 5. For such other and further relief as the Court may deem just and proper.

6  
7 DATED: June 21, 2021

SALTZMAN & JOHNSON LAW  
CORPORATION

8  
9 By:

/S/

10 Matthew P. Minser  
11 Attorneys for Plaintiffs, District Council 16  
12 Northern California Health and Welfare Trust Fund,  
13 et al.  
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